

1 W. H. Jennings 101
 2 in March of 2007 the general ledgers did
 3 not reflect these journal entries?
 4 A This wouldn't be reflected in
 5 2007, as you see it.
 6 Q But it should have been put on
 7 the books immediately with the receipt
 8 of your journal entries; shouldn't it?
 9 A In the perfect world, which very
 10 rarely happens, he would have recorded
 11 these journal entries in 2006 to close
 12 out his old books. We do not verify
 13 that. That's not part of our
 14 procedures. If he made these
 15 adjustments, these proposed adjustments
 16 after they agreed to them, in his books
 17 of records in 2007 anything that affects
 18 the profit and loss, the profit and loss
 19 you have to understand has already been
 20 closed out to partner's capital. You
 21 will not see these journal entries in
 22 2007.
 23 Q When would you see them?
 24 A You should have seen them and I
 25 don't know if you did, when he closed

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1 W. H. Jennings 102
 2 out 2006. You'd have to go back to his
 3 old general ledger in 2006.
 4 Q Sir, these people would have been
 5 looking at the 2006 records of Dalton
 6 Management.
 7 A I am not aware of what they did
 8 or what they looked at.
 9 Q In fact, you have no idea what,
 10 if anything, Dalton Management has or
 11 doesn't have or what they do or don't
 12 do? You don't have any idea really; do
 13 you?
 14 A But you're asking me a specific
 15 procedure. You're asking me
 16 specifically about this journal entry.
 17 I'm telling you what should have
 18 happened. If you knew how an audit
 19 worked, we would not go back to their
 20 general ledger for 2006 to make sure
 21 they make these entries.
 22 Q Is there any --
 23 A Let me finish.
 24 The profit and loss is closed out
 25 at the end of the year. At the end of

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1 W. H. Jennings 103
 2 the year there's no profit or loss
 3 anymore. It's closed out to partner's
 4 capital, as adjusted. So therefore when
 5 you look at a trial balance you'll no
 6 longer see a profit and loss as of
 7 1/1/09, I'll use. We're auditing
 8 12/31/08. As of 1/1/09 you'll only see
 9 balance sheet accounts. You will not
 10 see auditing expense or management
 11 consultants. There will be no entries
 12 in those accounts.
 13 So therefore, what you're saying
 14 is not a procedure that I would look at
 15 to look at the prior year to see how he
 16 closed it out.
 17 My job is to make sure the
 18 financial statements are as accurate as
 19 reasonably possible. We don't look at a
 20 hundred percent of the transactions. We
 21 test transactions. I take an overview
 22 of the financial statement to make sure
 23 it's not material or misleading.
 24 Q Mr. Jennings, now, quite apart
 25 from the question of what Marks Paneth &

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1 W. H. Jennings 104
 2 Shron could be held responsible for, and
 3 apart from the question of whether Marks
 4 Paneth & Shron should have gone back and
 5 investigated the books of Dalton we do
 6 agree that Dalton, if it was doing
 7 accounting here, had a duty to make that
 8 journal entry and to show it in their
 9 general ledger?
 10 A Yes, in 2006.
 11 Q And if they had done it in 2006
 12 or any other time then Cameron, Pryce &
 13 Griffiths would have seen it?
 14 A But they wouldn't have seen this
 15 journal entry that you're showing me.
 16 Q They would have seen the change
 17 that was the result of your proposal;
 18 isn't that correct?
 19 A Is this the whole journal entry?
 20 Q If Dalton did it, they should
 21 have seen it in the general ledger; is
 22 that correct?
 23 A Is this the whole journal entry?
 24 Q Is this the whole journal entry?
 25 A Number eight, it looks like it

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1 W. H. Jennings 105
2 may end. Is that all of eight because
3 you see how it cuts off at the bottom?
4 I just want to make sure that I'm not
5 making a statement based on what I'm
6 being shown.
7 Q Let the record show that we're
8 showing the items that Mr. Jennings has
9 requested which is this following sheet
10 to Plaintiff's 5.
11 A Okay, every single one of these
12 entries are reclass entries. That means
13 the bottom line of the trial balance, if
14 they showed \$100,000 of net income
15 hypothetically before this journal entry
16 was made they would still show \$100,000
17 of net income after the journal entry
18 was made because every one of these are
19 just reclasses from one expense account
20 to another expense account.
21 Q Yes, it doesn't change the
22 results.
23 A Correct, so therefore --
24 Q But, sir, should they not have
25 recorded the change

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1 W. H. Jennings 106
2 A In 2006, yes.
3 Q -- if they were keeping books and
4 records.
5 A Right, if you made the
6 adjustments in 2007 you would not see
7 that journal entry.
8 Q In looking at the material from
9 Dalton Management and your people looked
10 at it for how many years now? How many
11 years did you audit this account?
12 A Under Dalton Management?
13 Q Yes.
14 A When did they take over? 2001, I
15 believe so six years.
16 Q In looking at their account did
17 you generally find their accounts to be
18 maintained or not maintained at all?
19 A Maintained.
20 Q So that you did on occasion make
21 inspections or make observations of
22 their bookkeeping and what they were
23 doing; is that correct?
24 A That's correct.
25 Q And you observed that since 2001

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1 W. H. Jennings 107
2 that they never kept trial balances and
3 never made a proposal about that?
4 A Yes, it's a possibility.
5 Q And you observed that as these
6 accountants asked them for document
7 after document that they said they
8 didn't have it and that they were
9 referring the accountants to you and did
10 that suggest to you that Dalton's books
11 may be less than correct?
12 A No, as I stated before, in my
13 profession it's not unusual for clients
14 to pick up the phone rather than to walk
15 over five feet to a filing cabinet and
16 collect documents.
17 Q Repeatedly, Mr. Jennings?
18 A Repeatedly, yes.
19 Q Repeatedly?
20 A Repeatedly.
21 MR. KELLY: Can you clarify;
22 repeatedly?
23 THE WITNESS: Repeatedly.
24 A I have 238 clients and I'm
25 telling you, 200 of them do the same

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1 W. H. Jennings 108
2 thing.
3 Q Well, you don't have time to do
4 anything else, do you?
5 A That's why I have staff.
6 Q That's a lot of money?
7 A That's why we eat a lot of time.
8 That's why our realization is only
9 seventy percent, not a hundred percent.
10 You go through those work reports and
11 you see looking for files, send
12 document.
13 Q Now, there came a time when
14 Cameron, Griffiths & Pryce in addressing
15 your request began to direct all their
16 requests to you, to Marks Paneth &
17 Shron, around August 14, 2007, there
18 came a time when they began to direct
19 all their requests to you and simply
20 copying Dalton; is that correct?
21 A I don't remember getting anything
22 personally after the initial inquiry,
23 the second inquiry from Logan.
24 Q But your staff may have?
25 A They may have, yes. Most of my

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1 W. H. Jennings 109

2 correspondents came through Dalton

3 that's why I responded to Dalton.

4 Q I'm looking at a communication

5 from Cameron, Griffiths, again, I'm not

6 going to mark it at this point, dated

7 August 14, 2007 to Marks Paneth & Shron

8 cc Dalton management, "please provide

9 the following items that we need as part

10 of our audit. One, Lakeview, original

11 agreement for the note payable to

12 Seavey, \$29,915.16." Do you recall

13 getting that request?

14 A No.

15 Q "Two, 2006 financial statements

16 and HUD report." Do you recall getting

17 that request?

18 A No.

19 Q Who in your office would have

20 received this request if it simply came

21 to Marks Paneth & Shron?

22 A I don't know.

23 Q "Three, mortgage notes." Do you

24 recall being asked for that?

25 A No.

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1 W. H. Jennings 110

2 Q "Four, the final general ledger

3 trial balance reflecting twelve months

4 of transactions." Do you recall getting

5 that request?

6 A It's not necessary to go through

7 every single line item. I didn't get

8 this information request, like I

9 explained earlier.

10 Q None of them?

11 A I received a request from

12 originally on Logan, we responded to it.

13 I got a second request on Logan. I

14 called Orley and I explained to him,

15 listen, it would be better if we just, I

16 know you're looking at a lot of jobs

17 etcetera and if we just sat down at some

18 point to just sit down and go through

19 all the issues at one time.

20 MR. HAYWOODE: Let's mark

21 this.

22 (A request list to Marks

23 Paneth & Shron from Cameron,

24 Griffiths & Pryce was marked

25 as Plaintiff's Exhibit 6 for

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1 W. H. Jennings 111

2 identification, as of this

3 date.)

4 Q Mr. Jennings, I'm going to ask

5 you to look down this whole list of

6 Plaintiff's 6, rather than my reading

7 it.

8 Explanation support for the

9 prepaid insurance, statements for

10 investments, account statement for Chase

11 Money Market, cash op, Citibank, number

12 eight, Nine, schedule for allowance of

13 doubtful account, ten, commercial lease

14 contract with electric corp and so on.

15 All these documents and Cameron,

16 Griffiths & Pryce are asking Marks

17 Paneth & Shron for it and only ccing

18 Dalton? That's what it appears to be.

19 A Yes, that's what it appears.

20 Q You had previously received

21 letters from them saying we can't get

22 anything from Dalton, is that correct?

23 A I'm not sure of that. Like I

24 said, the only two letters I know about

25 or the first that I can recall, let's

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1 W. H. Jennings 112

2 put it that way, are the Logan, the

3 first response and the second letter and

4 that's when I called Orley.

5 Q Who else was fielding these

6 requests aside from you, from Marks

7 Paneth & Shron?

8 A They would have come to my

9 attention.

10 Q They would have come to your

11 attention?

12 A Yes.

13 Q So that it's reasonable to

14 presume that in the natural course of

15 events you would have seen this request

16 too; is that correct?

17 A Under normal circumstances, yes.

18 I know there was a request for

19 information which I referred to before

20 just before I was about to leave and I

21 flipped through it quickly and saw the

22 extent of the amount and that's when I

23 tried to make contact with Orley and in

24 turn then I called Mr. Edmonds and I

25 asked my staff to handle whatever

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1 W. H. Jennings 113
2 requests, whatever information we had
3 available to cooperate and in my absence
4 put together and leave there for me upon
5 my return.
6 Q Mr. Jennings, as a result of your
7 audit and since you were only acting as
8 an auditor why would Marks Paneth &
9 Shron have had all those documents?
10 A I don't know the circumstances as
11 to why they were requesting it from us.
12 I wasn't privy to those --
13 Q Why would Marks Paneth & Shron
14 even have had all those documents given
15 that you were only the auditor?
16 A I have no idea why they made that
17 request of us.
18 Q But why would you have had them,
19 sir? In your audit you wouldn't keep
20 all of this backup material; would you?
21 I mean, would you?
22 A I'm not aware of a note payable
23 to Mr. Seavey, first of all.
24 Q Well, sir, as opposed to taking
25 individual items --

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1 W. H. Jennings 114
2 A But I have to.
3 Q The totality of them --
4 A But you're asking a question
5 about all this information and I don't
6 know why he would ask for them. We
7 wouldn't have commercial leases. We may
8 have a copy of maybe one or two pages of
9 it for our audit process. We wouldn't
10 have a whole lease. We wouldn't have a
11 note payable to Mr. Seavey. I don't
12 even recollect. 2006 financial
13 statements, I mean, I got to be honest,
14 that's absurd to ask us for. They have
15 them. They mailed them out.
16 Q Who is they?
17 A The management agent.
18 Q Dalton had it?
19 A Yes.
20 Q But you didn't see what Dalton
21 had? What you're saying, sir, is Dalton
22 should have had them; is that correct?
23 A Right, we know we sent them.
24 Q You sent them to Dalton?
25 A Yes.

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1 W. H. Jennings 115
2 Q But what they did with it after
3 that, you don't know?
4 A You know what, I've been in post
5 audit close out conferences with them
6 where we had to refer to prior year
7 financial statements and they would go
8 back, Earline would say, go back
9 Mr. Seavey's secretary --
10 Q I know Earline.
11 A She would say, what do you need?
12 Here it is. Same thing with mortgage
13 notes, general ledger. I mean, we
14 wouldn't even have the general ledger.
15 Account statements, I mean, this is all
16 things that they would have there,
17 should have there.
18 Q Do you have any idea,
19 Mr. Jennings, why between March of 2007
20 and November of 2007 Cameron, Griffiths
21 & Pryce could not get this information
22 from Dalton Management? Do you have any
23 idea why it would take them that long?
24 MR. TRAUB: Objection.
25 Assumes facts not in evidence.

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1 W. H. Jennings 116
2 MR. HAYWOODE: Well, I'm going
3 to suggest, and I don't want to
4 have to pull at this, but the
5 order to show cause as part of
6 the pleadings is in evidence and
7 the order to show cause is
8 replete with every request and I
9 believe there were fourteen of
10 them made by the accountants to
11 Marks Paneth & Shron and/or
12 Dalton seeking this information.
13 MR. TRAUB: My point is the
14 fact that they've asked for the
15 information doesn't show that
16 they in fact never really
17 received it before this. It just
18 shows that they're asking for it.
19 MR. HAYWOODE: Who is, "they,"
20 Darren?
21 MR. TRAUB: Cameron, Griffiths
22 & Pryce.
23 The fact that they're asking
24 for this does not in fact show
25 that they have never received it.

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1 W. H. Jennings 117
2 As you know it is Dalton
3 Management's position that they
4 did receive all of this over
5 their six-month inspection of the
6 books and records that occurred
7 prior to this.
8 MR. HAYWOODE: All right,
9 Darren, that's an offer of proof
10 that you're making now for the
11 record because you can't testify
12 to that and that means that if
13 and when you produce people from
14 Dalton Management they're going
15 to tell us then that they
16 supplied this information and
17 that Cameron, Griffiths, & Pryce
18 was just asking them day after
19 day just to be annoying. I mean,
20 is that your offer of proof? Is
21 that what you're telling me your
22 clients are going to testify to?
23 MR. TRAUB: I don't need offer
24 of proof. My point was that I
25 made an objection. You said you

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1 W. H. Jennings 118
2 want to pull out the order to
3 show cause. The order to show
4 cause, again, merely attaches
5 this and my point is that what
6 you can show is that they've
7 asked for these records but I
8 think it assumes facts in
9 evidence that they never received
10 these and that's my point and
11 it's just, again, an objection to
12 the form. I don't mean to sit
13 here and debate this with you.
14 Q But Mr. Jennings, those are all
15 documents that Dalton should have had;
16 isn't that correct?
17 A Yes.
18 Q Did you ever have occasion to
19 review Dalton's contract with these
20 developments?
21 A Yes, during the audit process.
22 Q What is roughly the compensation
23 that Dalton receives for the doing of
24 all this work?
25 A It depends on the type of job.

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1 W. H. Jennings 119
2 The division of Housing Community and
3 Renewal has a fixed contract with them
4 for three different types of fees.
5 HUD is a little unique. HUD has
6 gone through quite a transition over the
7 last several years because of the marked
8 to mark program. Originally it was \$59
9 per unit per month then it changed to
10 \$42 per unit per month plus front line
11 costs and then when they opted out or
12 the insured mortgage was paid off and it
13 went mark to market HUD allowed them to
14 take a percentage of fees based on what
15 the previous percentage was because with
16 mark to market you have to understand
17 that some of these rents went up a
18 significant amount of dollars. They had
19 HUD grants before and they went up to
20 market rents so there was actually, I
21 guess it wasn't Dalton, but there were
22 quite a few HUD owners that went to HUD
23 and say, listen, before we were getting
24 six percent so just because the rents
25 went up it doesn't mean we're not still

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1 W. H. Jennings 120
2 entitled to the six percent so therefore
3 we should still be entitled to a six
4 percent fee.
5 Q Sir, is it a fact that Dalton
6 collects twenty percent of the \$15
7 million dollars that these four
8 buildings take in, approximately?
9 A I don't know off the top of my
10 head.
11 Q Well, what percentage, off the
12 top of your head, would they take of the
13 \$15 million that these projects take in?
14 A I wouldn't know percentage wise
15 but I know on all the real estate
16 development I audit that once they opted
17 out and it went mark to market the
18 typical rage would be anywhere from \$62
19 per unit per month to as high as \$90 per
20 unit per month.
21 Q What do you estimate they paid in
22 2006?
23 A I don't know.
24 Q If I say to you that it was
25 between 2.5 and 3 million dollars does

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1 W. H. Jennings 121
2 that sound right?
3 A I don't know.
4 Q Would you have any idea?
5 A I'd have to look at the audits?
6 Q But assuming twenty percent,
7 would that be an outrageous figure?
8 A It seems high, yes.
9 Q So what percentage do you think
10 would be more in line with the norm?
11 A I'd have to go stick to the
12 formulas. Reasonable would be between
13 \$60 and \$89 per unit per month.
14 Q Which would result in how much a
15 year?
16 A I don't know. It depends on the
17 number of units.
18 Q How many units in Lakeview?
19 A Four hundred and change, I
20 believe. Well, no, Lakeview is
21 different. That's DHCR. That's
22 Division of Housing. You can't use
23 Lakeview as an example. You're talking
24 about apples and oranges here.
25 Q It is fair to suggest though that

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1 W. H. Jennings 122
2 Dalton is receiving somewhere between \$2
3 million and \$3 million a year for its
4 accounting services?
5 A I can't --
6 Q You have no idea?
7 A For what?
8 Q For its accounting services, you
9 have no idea?
10 MR. KELLY: Objection.
11 A That doesn't make sense.
12 Q What doesn't make sense?
13 A Two million dollars for the
14 accounting services?
15 Q For all of the four buildings.
16 MR. KELLY: You mean
17 management services?
18 Q I'm sorry, management services.
19 A I can't say. I don't know.
20 Q You have no idea?
21 A No.
22 Q And part of the managing services
23 is that they should be front line
24 accountants, isn't that correct?
25 A Front-line?

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1 W. H. Jennings 123
2 Q They should be accounting too,
3 isn't that correct?
4 A Accounting?
5 Q They should be accountants?
6 A You have to rephrase that. I
7 don't understand what you're talking
8 about.
9 Q Dalton Management with regard to
10 these buildings should be the accountant
11 also, is that correct?
12 A The bookkeepers, yes.
13 Q They should be keeping all the
14 books?
15 A Correct.
16 Q And the records?
17 A Correct.
18 Q And everything else?
19 A Correct.
20 Q And all the auditor had to do is
21 come in and look at a sample and go
22 through it and say, "okay, fine, this is
23 important, that's important, that's
24 important, you passed the test." Have I
25 described systemically what happens?

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1 W. H. Jennings 124
2 A Except for adjustments, proposed
3 adjustments.
4 Q Except for the proposed
5 adjustment that you make. When you make
6 a proposed adjustment you would put it
7 in writing to them, right?
8 A No.
9 Q How would you communicate it?
10 A We had a post-audit conference.
11 Q With who?
12 A With management.
13 Q And who would represent
14 management?
15 A It depends on who was there at
16 the time.
17 Q To your recollection who
18 represented management in 2006?
19 A It could be typically Ron Dawley.
20 Typically we'd go over it with Ron
21 Dawley.
22 Q And he'd be the only one?
23 A Typically.
24 Q Who else might you go over it
25 with?

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1 W. H. Jennings 125
2 A Neale Seavey might have been part
3 of it.
4 Q Neale Seavey and who else?
5 A That's about it.
6 Q So it was either Ron Dawley or
7 Neale Seavey.
8 A Unless we had some site issues.
9 Q Never Avery; is that correct?
10 A They might have gone over. Avery
11 might have sat in at times.
12 Q Robert has sat in?
13 A No, typically Robert would not
14 sit in.
15 Q What about Phyllis?
16 A Phyllis would occasionally sit
17 in, yes.
18 Q And all these proposals would be
19 proposed to them in a conference?
20 A Correct.
21 Q Are there minutes taken of this
22 conference?
23 A No.
24 Q And then whoever sat in, Ron
25 Dawley or Phyllis Seavey or Neale, would

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1 W. H. Jennings 126
2 any of them say, "good, fine, we're
3 going to go back and we're going to
4 correct the general ledger"?
5 A No.
6 Q But they would have known that
7 had to be done, right?
8 A I assume so, yes.
9 Q And they would know that if it
10 wasn't done that someone coming in to
11 audit, as Mr. Cameron's organization
12 did, wouldn't know where to begin; is
13 that correct? If all the changes, if
14 all the journal change proposals were
15 not reported in those books it would be
16 impossible for anyone to really audit
17 and to know what's going on; is that
18 correct?
19 A The agreed upon, yes.
20 Q They might calculate figures from
21 their audit based on what they could see
22 and they might turn out some \$7 to \$8
23 million dollars short in terms of being
24 able to justify the expense issues from
25 the actuality of the figures that you

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1 W. H. Jennings 127
2 propound, that would have been possible,
3 right?
4 A It is possible, yes.
5 Q And if that happened would that
6 change your opinion as to the quality of
7 care that Dalton was given to these
8 records?
9 A No.
10 Q Sir --
11 A It's common, it's very common in
12 the industry that this occurs and they
13 have to approve the journal entries.
14 They are supposed to make the journal
15 entries. It's common practice.
16 Q Did Dalton keep these things or
17 did they not?
18 A Keep what things?
19 Q The book, the records?
20 A Yes, they did.
21 Q But you never saw it and you
22 can't verify it and the indication on
23 form of communications is that people
24 were coming to Marks Paneth & Shron and
25 asking for it and not asking Dalton and

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1 W. H. Jennings 128
2 the letters in the pleadings are saying
3 we can't get this information from
4 Dalton and that's why we're coming to
5 Marks Paneth & Shron?
6 MR. KELLY: Objection.
7 You don't need to answer that.
8 Q Was that information that reached
9 you or was it not?
10 MR. KELLY: Objection.
11 What are you referring to in
12 your question?
13 MR. HAYWOODE: The information
14 that I said, that everyone was
15 looking for Marks Paneth & Shron
16 and not for Dalton?
17 A But I can't say why they were
18 looking for us. I don't know what
19 transpired on that end.
20 Q But you were answering; is that
21 correct?
22 A I answered Logan.
23 Q You say you only answered once?
24 A That's it.
25 Q And you didn't answer any other

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1 W. H. Jennings 129
2 time?
3 A No, I explained to you what
4 happened. Let's go through this again.
5 I got an inquiry on Logan. We answered
6 the question a few days later. We got
7 another inquiry on Logan a few months
8 later. I called Orley. I explained to
9 him that it would be easier, I know
10 they're looking at a lot of jobs, just
11 to sit down when they have all their
12 questions compiled to save time and
13 energy and money and sit down and go
14 through all the information.
15 The next time I heard, to my
16 recollection, was just before I was
17 about to go away and it was a demand for
18 information, implying that I wasn't
19 cooperating in the past which is not
20 true, I would comply with any requests
21 that's made as long as it's authorized
22 by the owners. I then called Mr.
23 Edmonds and explained to him the
24 situation. He said to me, "Bill, don't
25 worry. I will speak to the accountant."

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1 W. H. Jennings 130
2 That was the last communication I had
3 until this lawsuit.
4 Q Now, with regards to Lakeview,
5 your audit contract for \$34,155; is that
6 correct?
7 A That's correct.
8 Q But \$108,000 was paid,
9 approximately \$74,000 more; is that
10 correct?
11 A Correct.
12 Q Who made the decision to
13 reclassify the audit payments in excess
14 of the contracted amounts from audit
15 fees to management fees?
16 MR. TRAUB: Objection to the
17 form.
18 Q I'm sorry, to management
19 consulting fees, who made that decision?
20 MR. TRAUB: Same objection.
21 It assumes facts not in
22 evidence.
23 You haven't shown the \$74,000
24 is the same as the \$82,000. The
25 numbers don't match.

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1 W. H. Jennings 131
2 MR. HAYWOODE: My question to
3 the witness, the witness
4 testified previously that the
5 auditing contract was \$34,155.
6 We had a substantial testimony to
7 that.
8 MR. TRAUB: My --
9 MR. HAYWOODE: We have
10 substantial testimony and in this
11 record by identification is the
12 fact that the general ledger
13 reported \$108,000 was paid.
14 MR. TRAUB: My point is
15 \$108,000 minus the \$34,000 is
16 \$74,000. It's not \$82,909 which
17 is the amount --
18 MR. HAYWOODE: What does
19 \$82,909 got to do with this? That
20 was something else.
21 MR. TRAUB: That's the money
22 that you just said was classified
23 from audit to management fees.
24 You're making a jump from one set
25 of numbers to another.

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1 W. H. Jennings 132
2 MR. HAYWOODE: Well, now,
3 again, that's your objection.
4 Q Was \$74,000 reclassified to
5 management consulting fees, sir?
6 A I don't know that. I would
7 assume so.
8 Q You would assume so?
9 A I would assume so.
10 Q Who made that determination to do
11 that if it was so?
12 A It would have been done by the
13 field auditor and then reviewed by me
14 and then approved by as part of our
15 proposed journal entries because those
16 did not represent audit fees.
17 Q So that Marks Paneth & Shron
18 would have made that determination; is
19 that correct?
20 A Based on that proposed journal
21 entry, yes.
22 Q Now, with Church Home, the audit
23 fee contract called for \$39,769 and an
24 additional \$2,000 was accrued. A total
25 of \$41,769 was paid in 2006 to Marks

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1 W. H. Jennings 133
2 Paneth & Shron by Church Home.
3 The \$24,000 was reported in the
4 financial statement; is that correct?
5 A As the audit fee.
6 Q And \$17,769 was reclassified to
7 management expenses; is that your
8 recollection?
9 A Probably management consultant
10 expenses.
11 Q Who made the determination to
12 transfer that excess account, \$17,769,
13 to management expense?
14 A The field auditor because those
15 expenses represent non audit fees.
16 Q When you say, "the field
17 auditor," you are referring to someone
18 working for Marks Paneth & Shron; is
19 that correct?
20 A That's correct.
21 Q It was approved by his supervisor
22 and ultimately you, I presume; is that
23 correct?
24 A Correct.
25 Q And it was passed onto your

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1 W. H. Jennings 134
2 quality review committee and they review
3 the quality of it; is that correct?
4 A Correct.
5 Q Logan Plaza, audit fees were
6 \$36,694. That was paid for accounting
7 in 2006. \$2000 was accrued, making a
8 total of \$38,694. \$24,000 was recorded
9 in the financial statement. The
10 difference of \$12,694 was charged to
11 management consultant expense. Who made
12 that decision; same people?
13 A Same people.
14 Q Charles Hill Housing, audit fees
15 \$36,616 was disbursed. The additional
16 amount of \$2,000 was accrued making the
17 total paid in 2006 \$38,616. \$24,000 was
18 recorded. Same people made that
19 decision?
20 A Yes.
21 Q All from Marks Paneth & Shron?
22 A Yes.
23 Q And you say that the appropriate
24 journal entries were directed by you but
25 you don't know whether Dalton recorded

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1 W. H. Jennings 135
2 them or not?
3 A Correct.
4 Q And nobody ever checked?
5 A There's no reason to check.
6 Q So that if any accountants like
7 Cameron, Griffiths & Pryce were to go
8 and look at the books of this
9 corporation they would say, as we said
10 in Brooklyn, how come one figure is
11 being reported to DHCR and HUD and
12 another figure is in the general ledger?
13 They would see that assuming that Dalton
14 didn't do what it was supposed to do; is
15 that correct?
16 A Yes, they would see it in the
17 journal entries where it was reclassified.
18 Q And in that way they could build
19 up together with other thing seven or
20 eight million dollars that they can't
21 justify. What happened here? Why are
22 the numbers in the financial statement
23 -- well, let me say it this way --
24 A We did not change the total
25 expenses.

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1 W. H. Jennings 136
2 Q Let me say it this way, in this
3 process, assuming the general ledger was
4 saying one thing and was not reflecting
5 the increases being reported in the
6 financial statement by Marks Paneth &
7 Shron it is possible that a lot of money
8 here could appear unaccounted for; is
9 that correct? It may not be anybody
10 took it, but it would appear unaccounted
11 for?
12 A Not for reclassification. If you
13 reclassify one expense to another
14 expense the net effect is zero. It's
15 still zero.
16 Q I didn't major in math. I
17 understand that if I reclassify
18 something, if I buy shoes and move it
19 out of the shoes column and put it in
20 the haberdashery column, I'm not going
21 to change the result but if I buy shoes
22 for \$108,000 and then I put it in the
23 \$34,000 column then I'm going to come up
24 with \$74,000 difference, right?
25 A Not if you add it all up because

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1 W. H. Jennings 137

2 now it's not high heels, it's sneakers

3 and it's still the same amount of money.

4 Q Except that if I'm doing my

5 addition in the general ledger and I'm

6 not changing my general ledger to

7 reflect journal entries increasing the

8 amount of money, anyone looking at my

9 general ledger wouldn't know where all

10 this other money was going; isn't that

11 so?

12 A No, you're adding wrong.

13 Q Well --

14 A You're adding wrong. If you're

15 taking from one category of expense, to

16 the other category of expense, the

17 expenses in total is still the same.

18 Q Should not Marks Paneth & Shron

19 have recorded \$105,000 income in 2006

20 that they took as either audit fees or

21 consultant fees?

22 A It was disclosed.

23 MR. KELLY: Objection.

24 You just asked if Marks Paneth

25 & Shron should report it?

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1 W. H. Jennings 138

2 MR. HAYWOODE: Yes, in the

3 financial statement. In the

4 statement to HUD and DHCR should

5 they have reported it?

6 MR. KELLY: With that

7 clarification you can ask that.

8 Q And in the disclosure statement

9 should they have reported it there?

10 A What disclosure statement?

11 Q The disclosure statements that

12 you make to the regulatory agencies?

13 A It is disclosed. It's in the

14 profit and loss.

15 Q The \$105,000?

16 A We're not a related party.

17 Q Should you not have told the

18 state and is not the purpose of the

19 state in asking that you get permission

20 to receive more money for the audit to

21 see if you're getting more money than

22 the \$34,000?

23 A Not audit fees.

24 Q Sir, let's think GAGAS now.

25 Let's look at the GAGAS regulations and

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1 W. H. Jennings 139

2 we've talked about independence and you

3 testified to the conduct and behavior of

4 Marks Paneth & Shron here and you're

5 human beings, so I don't say it in an

6 accusatory way but look, should not

7 Marks Paneth & Shron have gone to HUD or

8 DHCR and say, "look, in addition to the

9 \$34,000 from auditing we're getting paid

10 because these four corporations are

11 accruing debts since 2002 which they owe

12 us with the result of which that in one

13 year we collected \$105,000 and we make a

14 full disclosure of that but we weren't

15 influenced by that?" Shouldn't you have

16 at least had to make that presentation

17 to DHCR or HUD given the regulations and

18 given the rules?

19 A No.

20 Q Not at all?

21 A No.

22 Q You say there was perfectly

23 nothing wrong with you accumulating

24 debts from these corporations, these

25 four, which justify the receipt of

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1 W. H. Jennings 140

2 \$74,000 more than your contract called

3 for without any request to HUD and

4 without any request to DHCR, you say

5 that that was proper procedure?

6 A Yes.

7 MR. KELLY: Objection to form.

8 MR. TRAUB: Objection to form.

9 MR. HAYWOODE: He's already

10 answered it.

11 MR. TRAUB: I still get to get

12 my objection on the record.

13 I said objection, I need to

14 tell what it is.

15 MR. HAYWOODE: Do you have to

16 say what the form is? You object

17 to the form. Isn't that

18 sufficient?

19 MR. TRAUB: No, it's not. My

20 objection is that you're

21 classification of \$74,000 in debt

22 is contrary to the prior

23 testimony. It assumes facts not

24 in evidence.

25 MR. HAYWOODE: Well, I think

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1 W. H. Jennings 141
2 it does but whatever.
3 MR. KELLY: And I'm objecting
4 to form and I'll take your advice
5 and not bother you with my
6 explanation and I'll instruct the
7 witness not to answer.
8 MR. TRAUB: Mel, it's almost
9 2:00. I don't know how much more
10 you have and whether or not we
11 should take a lunch break.
12 MR. HAYWOODE: Yes, I just
13 paused to think if maybe we
14 should take a break.
15 How does everybody feel? Is
16 everybody up for this? We're
17 supposed to go on tomorrow too.
18 MR. KELLY: What? I didn't
19 understand we were going until
20 tomorrow.
21 MR. HAYWOODE: Well, we got
22 two days here set aside.
23 MR. KELLY: Yes, the order
24 said 3rd or 4th or other
25 agreeable date.

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1 W. H. Jennings 142
2 MR. HAYWOODE: Well, Darren is
3 here. He's leaving on the 5th so
4 we're not going to be able to do
5 anything when he's not here.
6 MR. KELLY: My point is not
7 the scheduling issue. My point
8 is he's available for one day of
9 deposition pursuant to local
10 rules and the court order said 3
11 or 4 or other mutual agreeable
12 date. Not 3 and 4 and other days
13 if necessary.
14 MR. TRAUB: There's only seven
15 hours allowed of testimony under
16 the federal rules.
17 MR. HAYWOODE: I thought it
18 was ten.
19 MR. TRAUB: No, seven hours.
20 MR. HAYWOODE: I'm sorry,
21 eight.
22 MR. TRAUB: Seven. One day of
23 seven.
24 So if you want to take a lunch
25 break and get your thoughts

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1 W. H. Jennings 143
2 together and then come back I
3 think that's --
4 MR. HAYWOODE: You want to do
5 all this in one day?
6 MR. TRAUB: Yes. I was under
7 the impression that it was one
8 day, that it was today starting
9 at ten o'clock. I did not set
10 aside tomorrow as well. The e-
11 mail said either available either
12 the 3rd or the 4th and then I
13 believe his response e-mail was,
14 "we're available on the 3rd," and
15 you said that's confirmed.
16 MR. HAYWOODE: Then we'll take
17 a break and we'll reconvene.
18 (Whereupon, a recess was
19 taken.)
20 Q Mr. Jennings, you say that
21 William Shron passed away two weeks ago
22 or so?
23 A Yes.
24 Q Our condolences, of course.
25 A Thank you.

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1 W. H. Jennings 144
2 Q Was Mr. Shron the personal
3 accountant for the Seaveys as well as
4 the accountant for these four
5 development?
6 A I wouldn't know.
7 Q But he has known Robert Seavey
8 since 1973; is that correct?
9 A I wouldn't know.
10 Q He did do personal work for Mr.
11 Seavey; in your earlier testimony, on
12 buildings other than these four
13 buildings; is that correct?
14 MR. KELLY: Objection to form.
15 Q He did do work on buildings other
16 than these four buildings for Mr.
17 Seavey; is that correct?
18 MR. KELLY: You can answer.
19 A To my knowledge, yes.
20 Q And that predated even the 1990
21 contracts for the four buildings; is
22 that correct?
23 A Yes.
24 Q Of the fourteen buildings, and I
25 may have asked this before, that the

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1 W. H. Jennings 145

2 Seavey group has interest in, is Dalton

3 Management the management company for

4 all of those other buildings?

5 A I believe so since 2000, 2001.

6 Q Is Marks Paneth & Shron the

7 auditor for all those other buildings?

8 A Yes, I believe so.

9 Q And Marks Paneth & Shron may do

10 tax work under the contract for those

11 building; is that correct?

12 A That's correct.

13 Q Are you aware in any way as to

14 the formula through which the Dalton

15 employees are reimbursed by the

16 developments for their services? Are

17 you aware of any formula that's used to

18 do that?

19 A The front line cost; is that what

20 you're referring to?

21 Q Yes.

22 A Yes.

23 Q Under the Lakeview, Fifth and

24 106th Street agreement, that agreement

25 does call for front line people, on site

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1 W. H. Jennings 146

2 people to be paid by the partnership?

3 A That's a contractual agreement

4 with -- the Division of Housing, as I

5 explained before, has a specific

6 management agreement. It doesn't go

7 with HUD formulas. You're mixing up HUD

8 formulas with DHCR formulas.

9 Q Well, I didn't say anything about

10 HUD.

11 A But you're referring to front

12 line costs. Front line costs is a term

13 that I use when referring to HUD.

14 Q Do the contracts that pertain, to

15 your knowledge, to the employment of

16 Dalton call for the partnerships or

17 buildings at which Dalton is servicing

18 to contribute only to the personnel on-

19 site or do they also cover the expense

20 of persons like Ron Dawley?

21 A To my knowledge, I don't recall.

22 Q In your review of Logan Plaza did

23 it come to your information that

24 Cameron, Griffiths & Pryce in their

25 testing of the accounts noted that

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1 W. H. Jennings 147

2 \$181,000 was listed in the general

3 ledger and disclosed on the financial

4 statement as an amount owing to Dalton

5 Management?

6 A Yes, I am aware of that.

7 Q Did it subsequently develop an

8 inquiry by Cameron, Griffiths & Pryce

9 that the money really should have been

10 payable to the partners?

11 A I don't recall that.

12 Q Is this not a fact that both

13 Seavey and John Edmonds confirmed that

14 the \$181,000 was due to the partners?

15 A Not to my knowledge.

16 Q And the payment was not

17 reclassified then, to your knowledge, to

18 be paid to the partners?

19 A Not to my knowledge.

20 Q Do you recall that these payments

21 were listed in the accounts payable

22 schedule in the general ledger?

23 A Yes.

24 Q Should they not better have been

25 reclassified as distribution if it was

LEX REPORTING SERVICE
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1 W. H. Jennings 148

2 payable to the partners?

3 A It wasn't payable to the

4 partners. It was payable to the

5 management company representing unpaid

6 management fees during a period that

7 Logan couldn't afford to pay the

8 management fee.

9 Q So that you say that the money

10 was owed to Dalton?

11 MR. HAYWOOD: Off the record.

12 (Whereupon, a brief discussion

13 was held off the record.)

14 Q Did it come to your attention in

15 2006 with regard to Church Home that

16 management fees were overcharged by

17 \$1,396?

18 A Yes.

19 Q And that it accumulated to

20 \$11,169 in that year?

21 A I'm not sure of the amounts

22 you're representing but I know there was

23 a management fee issued at Church Home

24 that we uncovered.

25 Q And it came to your knowledge

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1 W. H. Jennings 149
2 that 2004 and 2005 overcharges totaled
3 \$39,088?
4 A I don't know if I can verify the
5 amount but I know there were overcharges
6 which was discovered upon our audit.
7 Q Is it a fact that the \$33,506 was
8 incorrectly used or that the \$11,169
9 from 2006 to offset the management fee
10 of \$121,795 which was disbursed?
11 A I'm aware that I'm pretty sure it
12 was repaid, the overcharge, because we
13 notified them of that in our management
14 audit.
15 Q Did Dalton Management in that
16 year pay itself fees designated as
17 overages totaling \$64,052 for the three
18 years, 2006, 2005 and 2004 which overage
19 was not supported by their management
20 contract?
21 A I'm not aware of that.
22 Q But their management contract
23 called for \$24,000; is that correct?
24 A I can't quote numbers.
25 Q And the financial statement

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1 W. H. Jennings 150
2 recorded fees received by Marks Paneth &
3 Shron was \$24,000 for that year; is that
4 correct?
5 A If that's what the financial
6 statements says. It's very difficult
7 for me to recall specific numbers.
8 You're asking me to recall specific
9 numbers.
10 Q Were you told by your attorney to
11 bring books and records to the
12 deposition?
13 MR. KELLY: I'm going to
14 object to that. Any
15 communications between myself and
16 my client are protected by the
17 attorney-client privilege.
18 Q Did anyone suggest that you bring
19 your books and records so that you might
20 examine them during the deposition?
21 MR. KELLY: I'm going to
22 object to the extent that that
23 question is just a rephrasing of
24 a question designed to illicit
25 attorney-client communications.

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1 W. H. Jennings 151
2 (Church Home Associates
3 deferred mortgage costs
4 statement was marked as
5 Plaintiff's Exhibits 7 for
6 identification, as of this
7 date.)
8 (An invoice dated 6/9/05 to
9 Dalton Management from Marks
10 Paneth & Shron was marked as
11 Plaintiff's Exhibit 8 for
12 identification, as of this
13 date.)
14 (Church Home Associates
15 management fee overage
16 calculation dated 12/31/06 was
17 marked as Plaintiff's Exhibit
18 9 for identification, as of
19 this date.)
20 Q Let me show you 9 which is the
21 overage calculation, Mr. Jennings. Who
22 calculated number 9?
23 A My staff.
24 Q Your staff?
25 A Yes.

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1 W. H. Jennings 152
2 Q Which is to say that Marks Paneth
3 & Shron did it; is that correct?
4 A Yes.
5 Q In the previous audits that you
6 did you did not pick up or see that
7 Dalton Management was receiving monies
8 in excess of its contractual balance; is
9 that correct?
10 A I think that's a fair statement,
11 yes.
12 Q With regards to Plaintiff's
13 Exhibit 8, this is a bill submitted by
14 Marks Paneth & Shron to Caanan IV on
15 June 9, 2005 for special consulting
16 regarding refinancing transaction of a
17 new mortgage and the payoff of existing
18 debt budgets concerning surplus cash,
19 limited partners request, property tax
20 arrears and other matters and that bill
21 is \$32,588; is that correct?
22 MR. KELLY: The witness hasn't
23 been given the exhibit yet.
24 MR. HAYWOODE: I'm sorry.
25 This is number 8.

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1 W. H. Jennings 153

2 Q The number's \$32,588; is that

3 correct, sir, the additional billable

4 time?

5 A That's correct.

6 Q And the figure of \$3,811 is

7 deducted as non billable. Is that

8 because it's covered by the auditing

9 contract?

10 A No, that's typically when I

11 reviewed the work in process if it's for

12 time that I believe can't be billed such

13 as I referred to before, you know,

14 looking for files, two hours, etcetera,

15 I pull it out. It's a discretion area.

16 Q And then there's a courtesy

17 discount in addition to that?

18 A Correct.

19 Q What is the nature of that?

20 A Typically, all my long-term

21 clients I give them a discount for the

22 billable time. It's a courtesy.

23 Q And it's fair to say that the

24 Seavey group and the Seaveys, these

25 developments and all of the fourteen

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1 W. H. Jennings 154

2 developments are a long time client; is

3 that correct?

4 A Yes.

5 Q On the 30.13, the Yellow Book

6 GAGAS regulations isn't there a

7 suggestion that auditors should be

8 changed every three or four years or

9 something to that affect, in the updated

10 regulations; are you familiar with any

11 such rule?

12 A No, I'm not.

13 Q There is no likelihood that the

14 fact that one auditor has worked with

15 anywhere from four to fourteen

16 developments for ten years there is no

17 likelihood that that might destroy any

18 independence or individuality that the

19 accountant might exercise in auditing

20 their books and records?

21 MR. KELLY: Objection.

22 That's not a question.

23 MR. HAYWOODE: Does the

24 witness understand it?

25 MR. KELLY: That's not a

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1 W. H. Jennings 155

2 question. I'm not going to let

3 him respond to a statement you're

4 making.

5 MR. HAYWOODE: Are you

6 directing him not to answer?

7 MR. KELLY: There is no

8 question to answer so I'm

9 directing him not to make a

10 statement on the record in

11 response to a statement you made.

12 Q Do you understand the question

13 that I pose?

14 MR. TRAUB: Can you rephrase

15 it just to clarify rather than go

16 back and forth?

17 MR. HAYWOODE: All right,

18 let's do that, Darren.

19 Q Say it this way, your quality

20 review committee, did it ever occur to

21 them that there might be some loss of

22 individuality or independence if you

23 were with one client for ten years if

24 that client had fourteen major

25 developments and if you did tax work for

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1 W. H. Jennings 156

2 that client and if your partners had

3 been associated and done personal work

4 with those clients for a period which

5 may extend back to 1973, did anybody say

6 that, "wait a minute, we're too close to

7 these people"; no one said that at Marks

8 Paneth & Shron?

9 MR. KELLY: I'm going to

10 object to the form of that

11 question as being compound.

12 MR. HAYWOODE: Well, I'll read

13 it back the third time for the

14 jury one day.

15 Q Did anyone feel that the

16 association with the Seavey group that I

17 just outlined would destroy

18 individuality, would destroy the ability

19 of Marks Paneth & Shron to do an

20 impartial view of what financing they

21 were doing? Did anyone say anything

22 about that? Did any red flags go up?

23 Did the quality and review people say

24 anything about it?

25 MR. KELLY: Objection again.

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1 W. H. Jennings 157

2 You're compounding the

3 question.

4 Q Well, let's take them one at a

5 time, sir. Did anybody say anything

6 about this?

7 A No.

8 Q Of the fourteen developments that

9 you worked with the Seavey group and

10 Edmonds on what is the combined

11 approximate monies that are received

12 from those fourteen developments in any

13 one-year, approximately?

14 A \$300,000.

15 Q Would this be considered an

16 insubstantial retainer by the agency?

17 A What agency?

18 Q By Marks Paneth & Shron, would

19 you consider this an incidental account,

20 an unsubstantial account?

21 A It's a large account but it's not

22 material to the firm.

23 Q \$300,000?

24 A \$300,000.

25 Q This balance due of \$23,000, this

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1 W. H. Jennings 158

2 is related to a mortgage transaction

3 that took place previously to June 9th

4 of 2005?

5 A That's correct.

6 Q Is it not a fact that that

7 mortgage transaction took place in 2004,

8 almost a year before?

9 A It's possible.

10 Q Is it not a fact that that's what

11 occurred?

12 A I don't have the mortgage

13 documents in front of me.

14 Q Was the custom of Marks Paneth &

15 Shron to wait a year to bill these

16 developments for fees that it had justly

17 earned? Was it the practice to do that?

18 A It's a possibility. I don't know

19 if it's a practice.

20 Q And the fees that are referred to

21 are listed on exhibit 7 -- do you have

22 Exhibit 7?

23 MR. KELLY: The witness does

24 not have the marked Exhibit 7.

25 Q -- on Exhibit 7 at the last line

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1 W. H. Jennings 159

2 and as professional fees; is that

3 correct?

4 A That's correct.

5 Q Except that that line lists

6 \$22,022; is that correct?

7 A That's correct.

8 Q So that \$1,000 is taken off from

9 the total on Exhibit 8 and could you

10 tell us why that was done?

11 A It would have to do with the

12 refinancing of the mortgage. I'd have

13 to look at the work in process to

14 actually determine.

15 Q Is there a reason that this

16 \$22,000 was recorded in an amortization

17 schedule as opposed to a professional

18 fee schedule?

19 A It's like legal fees associated

20 with the refinancing of the mortgage.

21 It would be deferred over the life of

22 the mortgage. Lease fees are over the

23 life of the lease. It would be deferred

24 over the life of the lease or for other

25 professional fees associated with that

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1 W. H. Jennings 160

2 refinance would be deferred and properly

3 amortized over the life of the mortgage

4 where the asset turns to a liability.

5 Q You say that the payoff of

6 existing debts, budgets, surplus cash

7 and limited partners request, property

8 tax arrears and other matters are

9 related to the mortgage?

10 A It could be a coincidence. I'll

11 have to look at the work in process

12 because I'd have to look at the actual

13 work and see how that amount was

14 extracted to be deferred.

15 Q But the new mortgage is

16 separately stated and listed in Exhibit

17 8; is that correct?

18 A That's correct.

19 Q And I presume that in reporting

20 to DHCR and HUD or whoever might be

21 interested the monies were not reported

22 as professional fees but were placed in

23 some other category; is that correct?

24 A Correct.

25 Q And no request for a variance

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1 W. H. Jennings 161

2 from DHCR or HUD were obtained --

3 A Not required.

4 Q -- as would allow for the receipt

5 of monies in addition to the retainer in

6 this circumstance?

7 A It's not required.

8 Q And you say that the regulations

9 that pertained in the provisions of the

10 contract you have do not require you to

11 obtain permission for such a transfer?

12 A No, only from the -- rephrase the

13 question. Repeat the question.

14 Q That the regulations and

15 contracts that you operated on did not

16 require you to report this as a fee?

17 A That's correct.

18 Q Now, Cameron, Griffiths & Pryce

19 has requested a copy of the engagement

20 letter between Dalton Management and

21 Church Home and they were advised that

22 they had to get that from Marks Paneth &

23 Shron; is that correct?

24 A I'm not aware of that.

25 Q Do you know of any reason why

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1 W. H. Jennings 162

2 Dalton Management would not have been

3 able to provide the engagement letter?

4 A No.

5 Q Are you aware that in

6 interrogatories submitted to both Mr.

7 Traub's office and Mr. Kelly's office we

8 had asked for the production of that

9 document?

10 A I'm not aware.

11 Q And you are not aware that to

12 this date we have not received such a

13 document?

14 A I'm not aware of that.

15 Q Are you aware that Dalton

16 Management charged Logan Plaza

17 Associates \$46,611 for office salaries

18 and other central office expenses in

19 2006 contrary to the management contract

20 which calls for payments of people on

21 site?

22 A No.

23 Q Is it your recollection that the

24 management agreement with Logan recites

25 that all of the agents, home office,

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1 W. H. Jennings 163

2 bookkeeping, clerical, payroll and other

3 management payroll and overhead expenses

4 including, but not limited to, cost,

5 office supplies and equipment, postage,

6 transportation for managerial personnel

7 and telephone services are to be borne

8 by the agent, Dalton, out of its own

9 funds and not to be treated as a project

10 expense as paragraph 16 section 1. Are

11 you aware of that?

12 A No.

13 Q Are you aware that Dalton

14 allocates a portion of its central

15 office cost such as wages, computer,

16 telephone, office, travel, medical and

17 payroll taxes to Logan Plaza contrary to

18 the management contract and that the

19 amount paid in 2006 was \$46,611?

20 MR. KELLY: Objection to the

21 form.

22 Q Do you understand the question,

23 sir? Are you aware that that happened?

24 A No, not the specifics.

25 Q We talked before about Lakeview,

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1 W. H. Jennings 164

2 directing your attention to the

3 Lakeview. We discussed that \$108,585

4 was paid to Marks Paneth & Shron and

5 that \$8,539 was accrued, making a total

6 of \$117,067 for audit services and that

7 the engagement letters for 2004, 2005

8 and 2006 suggested the on the financial

9 statements reported \$34,155 for these

10 services. Are you aware that that

11 happened?

12 A I'm not aware of the specific

13 numbers but again, you're mixing up

14 audit fee with consulting fees, with tax

15 preparation fees, with tax examination

16 fees, tax projections. You're mixing

17 apples and oranges.

18 Q And you're saying that on the

19 accrual method you wouldn't have to

20 declare the total \$117,000 as

21 professional fees being paid to Marks

22 Paneth & Shron?

23 A No.

24 Q You're not saying that?

25 A Ask again.

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1 W. H. Jennings 165

2 Q So that you're saying that
3 because you were doing the accounting on
4 the accrual basis you did not have to
5 report the entire \$117,000 paid in 2006
6 said to have been accrued from between
7 2002 to 2006? You're saying that
8 because you're doing it on the accrual
9 basis you didn't have to say that?

10 A That's not what I said.

11 Q Okay.

12 A I said because it's on an accrual
13 basis and the general ledger that you
14 showed me said a cash general ledger I
15 could not answer you as to the
16 specifics. I don't know when it was
17 accrued.

18 You're throwing numbers at me
19 that I have no ability to recollect.

20 Q Sir, do you need time to go back
21 and look at the books that we have here
22 today, I mean, we have them, you can
23 look at them or you might consult your
24 own. These are the documents that were
25 delivered by your attorney in a box, I

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1 W. H. Jennings 166

2 take it, because Dalton doesn't have it
3 and if you need to look at this and then
4 come back and then you can tell us the
5 truth or you can tell us what you might
6 then have knowledge of. Would you like
7 time to do that?

8 A Of the specifics, you're talking
9 about?

10 Q Yes, so that I would ask then
11 that, again, at this point that the
12 record be marked and that you consult,
13 on the advice of counsel of course, in
14 your records to determine what the
15 answers should be and then add it as a
16 postscript.

17 A Your question is misleading
18 though.

19 Q Go ahead.

20 A You asked about whether it was
21 done that way because of an accrual.
22 You're mixing apples and oranges. It
23 was disclosed as management consultant
24 fees, which I believe it was. It's
25 because we did other work --

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1 W. H. Jennings 167

2 Q In the financial statement?

3 A Yes -- other than the audit fee.

4 You also asked me what period, if
5 it was paid this year, why didn't it
6 show up? I don't know what adjustments
7 were made as far as an accrual basis,
8 when they were accrued. The fact that
9 when they were paid is not reflective of
10 when they would be reported in a
11 financial statement.

12 Q But you testified that it need
13 not be reported as a professional fee.
14 That was your understanding then?

15 A Correct.

16 Q And that is your contention now?

17 A Yes, because the agreement is
18 audit fees.

19 Q Now, is it not a fact that the
20 payments for the previous years should
21 have been accrued in the financial
22 statement, should have been marked
23 accrued in the financial statement?

24 A If they were billed by my firm,
25 as of when they were billed, yes.

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1 W. H. Jennings 168

2 Q And to your information were
3 these expenses accrued in the financial
4 statements of the previous years?

5 A I do not know.

6 Q Can you check that and come back
7 and let us know, yes or no, as to that
8 question?

9 MR. KELLY: I'm going to
10 object to any instructing of my
11 client to do or what not to do.
12 He'll hopefully follow his own
13 lawyer's advice on what he should
14 do and not do in connection with
15 this lawsuit.

16 MR. HAYWOODE: Well, is that a
17 Fifth Amendment objection that
18 might incriminate him?

19 MR. KELLY: Is that a joke?

20 MR. HAYWOODE: Not really. I
21 don't know. Are you saying that
22 it's optional? I advised him
23 with this. I can't direct him.

24 MR. KELLY: Well, that's a
25 difference.

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W. H. Jennings

169

MR. HAYWOODE: I advised the witness to cure the uncertainty if he can do so and to addend the record with whatever statement might cure the situation.

MR. TRAUB: Well, one of the problems --

MR. HAYWOODE: Just a minute. Or he may leave it standing the way it is.

MR. KELLY: When I receive the record and I see what information needs to be provided, I will give the appropriate advice at that time.

At this time he can't follow any of your instructions or directions.

MR. HAYWOODE: Well, dear God, it is not an instruction. It is not direction. It is the request for information which might lead us to a clearer truth. That's all it is.

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W. H. Jennings

170

MR. TRAUB: Again, I'm just throwing this out there to try to help move things along and not do this one way or the other, but maybe there is a specific place that you can ask him, you know, if you were to look at your records where would they be and maybe you have those records here that were produced previously and we can get those in front of him rather than say go back to your office and look them up. If it's a certain page or certain records that he would look at and they're not one of the eight exhibits or nine exhibits, maybe they're another one and we can get that in front of him.

MR. HAYWOODE: The problem, Mr. Traub, is that as a matter of judicial efficiency or if I sent someone to look through the pages I would have no idea what

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W. H. Jennings

171

documents we were looking for and there is a possibility they might not exist and the witness himself would have every idea of where it might be and it would take him much less time to get it.

MR. TRAUB: I agree but I also think that you're then trying to improperly expand the scope of the deposition beyond the seven hours by giving him homework assignments but again, that's just my take on it. I understand that you disagree.

MR. HAYWOODE: I can't do any more than a federal judge will let me do.

MR. TRAUB: That's why I was just wondering if we could try to move it.

MR. HAYWOODE: And Mr. Jennings is ably protected by counsel, esteemed counsel.

MR. TRAUB: Mine was merely a

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W. H. Jennings

172

suggestion just like yours. It wasn't taken as a directive or an instruction or even a request.

MR. HAYWOODE: Thank you, Darren.

Q Similar occurrences for Lakeview and Logan and Charles Hill; is that correct?

MR. KELLY: Objection.

What similar are you referring to because you withdrew the last question?

Q All right, I'll go through it. With regard to Charles Hill Housing \$36,616 was disbursed, in addition \$2,000 was accrued, making a total of \$38,616 for audit services in 2006. The final adjusted journal entry was the \$24,000 for the services and once again no engagement letter or contract was provided. It appears that the audit expense for 2006 exceeded the contract amount by \$14,616 plus \$2,000 which was accrued to be paid in

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1 W. H. Jennings 173

2 subsequent periods. Is that a fact of

3 what happened?

4 A No, you keep making an incorrect

5 statement when you equate all of the

6 fees as audit fees. They're not all

7 audit fees. We did a lot of consulting

8 work. I'll go through it again. Tax

9 examinations, RPIE, certiorari

10 proceedings, tax projections, buyout

11 computations, mark to market

12 conversions. You keep saying the same

13 thing, audit fees, audit fees. You keep

14 making them synonymous. An audit fee is

15 an audit fee. It says on the financial

16 statement audit fee. Then there's

17 management consulting fee. I'll give

18 you an example. If they hired me to do

19 the audit and your accountants to do all

20 the other consulting fees there would

21 still be the same amount of fee expense

22 in the audit line and the same amount in

23 management consultant fees, then we

24 would not be having this discussion.

25 Q But, now, the taxes are also

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1 W. H. Jennings 174

2 included in the audit fee, right?

3 A But that's an incidental cost for

4 tax return. With the discount, the

5 courtesy discount and the pulling out of

6 that, anything that we billed in excess

7 was completely disregarded.

8 Q And once again, it's your

9 position that other than audit fees need

10 not be reported to DHCR or HUD and that

11 no variants need be obtained from them

12 in the taking of such fees?

13 A That is my impression, yes.

14 Taking of earned fees.

15 Q With regard to your proposed

16 journal entries in 2006, with regard to

17 Lakeview alone there were a total of

18 twenty five or twenty six proposed

19 journal entry changes to the work that

20 Dalton was doing, is that correct?

21 A If you show me those journal

22 entries and there's twenty six then I

23 agree.

24 MR. HAYWOODE: Let the record

25 show that we are showing the

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1 W. H. Jennings 175

2 journal entries to Mr. Jennings

3 and the financial statement, I

4 believe, that was written by

5 Marks Paneth & Shron.

6 A Twenty five journal entries; is

7 that what you said?

8 Q Count them, sir. I don't know if

9 it's twenty five, twenty six.

10 A It says twenty five.

11 Q Is that a commonplace thing that

12 the auditor would make twenty five

13 journal entries in one year's situation

14 with one housing company to a

15 bookkeeping or accounting company; is

16 that common or is that a bit unusual?

17 A Absolutely.

18 Q So that you say that if we were

19 to look at any of the buildings that you

20 service with Dalton I would find the

21 same percentage, the same proportion of

22 journal entry proposal changes?

23 A In some cases, yes.

24 Q In all the Dalton buildings?

25 A In some cases, yes. Not

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1 W. H. Jennings 176

2 necessarily all. In all the jobs I

3 audit you'll see the same thing. You'll

4 see a lot of journal entries.

5 Q So that it's your testimony that

6 all of the companies that do the

7 bookkeeping and for which you do the

8 auditing require you to do extensive

9 journal entries?

10 A In the past that is a correct

11 statement.

12 Q And you testified before that in

13 subsequent years it is not your

14 responsibility to see that the

15 bookkeeping management company makes the

16 changes that you proposed in their

17 general ledger, you said that's not your

18 responsibility; is that correct?

19 A For the prior year.

20 Q And for any prior year you say

21 that's not your responsibility?

22 A Correct, I don't look at their

23 general ledger for the prior year.

24 Q But don't you need to see that

25 those changes are in the general ledger

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1 W. H. Jennings 177

2 for the prior year in going forward?

3 A No.

4 Q In no way?

5 A No way.

6 Q Are you aware that during the

7 audit conducted by Cameron, Griffiths &

8 Pryce that they had found the internal

9 accounting control systems of Dalton to

10 lack liability; were you aware that they

11 had said that?

12 A No, I'm not aware of that.

13 Q Would it be your opinion that

14 they lacked reliability also?

15 A Our recent sasses that have come

16 out in the last year would indicate that

17 when we make that many adjusting journal

18 entries it is an internal control

19 deficiency. That is a correct

20 statement.

21 Q Is there not a problem when

22 adjusting journal entries from income

23 and expenses are lumped in a

24 distribution account rather than in an

25 individual account?

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1 W. H. Jennings 178

2 A Can you repeat that?

3 Q Is it also misleading or

4 confusing when adjustments of journal

5 entries for income and expenses are all

6 lumped in the distribution account

7 rather than in an individual account?

8 A No, not to the extent you may be

9 thinking.

10 Q Does that distort the actual

11 balances in the accounts?

12 A No. If you recall in my previous

13 testimony I explained to you that the

14 profit loss accounts are closed out at

15 the end of the year. If you made these

16 adjustments in the subsequent year,

17 after 2006 was closed and he made them

18 in March of 2007, he would have taken

19 all the P and L accounts and closed it

20 to a capital account. If he deemed it

21 to be a distribution account, simply

22 semantics. It's not misleading because

23 that's an account that would be closed

24 out to capital anyway.

25 Q But in subsequent years Dalton's

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1 W. H. Jennings 179

2 work has been deemed deficient?

3 MR. TRAUB: Objection to form.

4 Deemed by whom?

5 MR. HAYWOOD: The witness's

6 testimony.

7 A It's an internal control comment

8 based on recent sasses.

9 Q Who made the internal control

10 comment?

11 A We do.

12 Q Marks Paneth & Shron?

13 A Marks, Paneth & Shron. On them

14 and all our clients to the extent that

15 we had to make what's deemed excessive

16 journal entries. And excessive journal

17 entries do not include depreciation or

18 amortization. And in some de minimis.

19 journal entries that auditors have a

20 tendency to make for immaterial and outs

21 so those are disqualified by our QR

22 department in making that determination.

23 So it is possible you can have

24 twenty five journal entries and to a

25 layman they may say that's excessive but

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1 W. H. Jennings 180

2 when you look at the content of those

3 journal entries, such as reclasses,

4 things like that, where you're

5 reclassing from, like you said before,

6 shoes to boots or shoes to sneakers,

7 that wouldn't necessarily be deemed,

8 that's cosmetic so when you narrow it

9 down and eliminate a lot of the

10 adjusting journal entries that were made

11 because they were maybe deemed

12 unnecessary due to materiality, that

13 twenty five could come down to ten and

14 all our clients were notified of this,

15 when the sass came out and hopefully

16 they learned.

17 Q Cameron, Griffiths & Pryce found

18 that Dalton records income and expense

19 accruals and adjusting journal entries

20 to the distribution account, as example,

21 Lakeview's ledger recorded legal fees of

22 \$104,182 but the auditor's adjusting

23 entries recorded legal fees of \$141,050.

24 The difference of \$36,586 is not

25 classified in the general ledger but is

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